

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Adip Vora	Team: Squad #1	CCRB Case #: 202000898	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 11/22/2019 1:21 PM	Location of Incident: § 87(2)(b)	Precinct: 23	18 Mo. SOL 5/22/2021	EO SOL 1/6/2022	
Date/Time CV Reported Sat, 02/01/2020 12:43 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 02/01/2020 12:43 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POF Gihee Yang	20180	962881	PSA 5
2. POM Kenneth Darlington	14509	960422	PSA 5

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Randall Bernal	21129	967773	PSA 5

Officer(s)	Allegation	Investigator Recommendation
A.POM Kenneth Darlington	Abuse: Police Officer Kenneth Darlington entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
B.POF Gihee Yang	Abuse: Police Officer Gihee Yang entered § 87(2)(b) in Manhattan.	§ 87(2)(b)

Case Summary

On February 1, 2020, § 87(2)(b) filed this complaint online.

On November 22, 2019, at 1:21 p.m., Police Officers Kenneth Darlington, Gihee Yang, and Randall Bernal, assigned to PSA 5, responded to a harassment complaint placed against § 87(2)(b) and a burglary call placed by her at her apartment located at § 87(2)(b) in Manhattan. PO Darlington entered § 87(2)(b) apartment and arrested her (**Allegation A: Abuse of Authority** – § 87(2)(g)). After § 87(2)(b) was arrested, PO Yang entered the apartment to retrieve her identification (**Allegation B: Abuse of Authority** – § 87(2)(g)).

§ 87(2)(b) was arrested and charged § 87(2)(b).

The investigation obtained body-worn camera (BWC) footage of this incident from PO Darlington and PO Yang (**Board Review 01-05**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Kenneth Darlington entered § 87(2)(b) in Manhattan.

Allegation (B) Abuse of Authority: Police Officer Gihee Yang entered § 87(2)(b) in Manhattan.

§ 87(2)(b) testified that the top lock of her NYCHA apartment was drilled by NYCHA management, and in response she went to the NYCHA Management office, pulled at the intercom until it unplugged, and removed a wooden stick that was in the window of the office (**Board Review 09**). She then placed a 911 call to report an intrusion of her apartment. When she returned to her apartment, she heard a knock on the door, and when she opened it, she saw PO Darlington, PO Bernal, and PO Yang standing outside of her apartment. PO Darlington asked her what happened, and PO Darlington and § 87(2)(b) discussed her complaint against NYCHA management. PO Darlington then told § 87(2)(b) that he was going to arrest her for what she did with the stick in the NYCHA Management office, which confused § 87(2)(b) because she did not hit anyone or try to force her way into the office, and glass protected the receptionist and other workers. PO Darlington placed his right hand in the middle of the door which opened into the apartment, placed his foot just past the door hinges so part of his foot entered § 87(2)(b) apartment, extended his left arm towards § 87(2)(b) and held her arms. § 87(2)(b) said that her keys and identification were in the back of her apartment, so PO Darlington walked with her to her room to get those items, while still holding her arms. § 87(2)(b) did not communicate to PO Darlington that she did not want him to enter her apartment, and PO Bernal and PO Yang did not enter her apartment. PO Darlington handcuffed her after they all left the apartment together.

PO Yang's BWC footage, at 01:53, of the video player run time, shows PO Darlington stepping past the threshold of § 87(2)(b) apartment and handcuffing her (**Board Review 04**). From 02:00 to 02:07, § 87(2)(b) says that she needs her ID. PO Darlington instructs her to tell him where it is so they can retrieve it together, and she tells him that it is in the back of her apartment. At 02:17, PO Yang enters the apartment and follows PO Darlington and § 87(2)(b) to § 87(2)(b) bedroom. At 02:30, PO Darlington retrieves her ID and keys from on top of a dresser in her bedroom.

PO Darlington's BWC footage at 01:07 shows § 87(2)(b) open her apartment door with her hands completely empty (**Board Review 05**).

PO Darlington testified that he responded to a call from the NYCHA Management office about an

individual throwing and breaking things and threatening the employees with a stick (**Board Review 10**). At the NYCHA Management office, PO Darlington, PO Yang, and PO Bernal took a full report from the NYCHA employees, who identified § 87(2)(b) as the subject of the call. PO Darlington knew § 87(2)(b) due to past incidents, and she was generally known to the department. Approximately 20 minutes later he received a radio call about a past burglary reported from § 87(2)(b) apartment. PO Darlington, PO Bernal, and PO Yang responded to § 87(2)(b) apartment with the intent to arrest her for her alleged actions at the NYCHA Management office. When they exited the elevator on § 87(2)(b) floor, § 87(2)(b) was outside of her apartment. § 87(2)(b) quickly entered her apartment and started to close her door. PO Darlington told her that they were there regarding the burglary call. § 87(2)(b) opened her door and complained that NYCHA had drilled out her lock and that she had problems with NYCHA housing. PO Darlington stood in the hallway, within arm's length of § 87(2)(b) during this time. PO Darlington considered § 87(2)(b) to be a flight risk and was worried that she would close the door on him, since she initially ran into her apartment as the officers exited the elevator. Shortly into the conversation, PO Darlington told § 87(2)(b) that she was going to be placed under arrest for the events that occurred in the NYCHA Management office and stepped less than a foot into the doorway and grabbed her wrist, after which § 87(2)(b) turned around willingly and PO Darlington handcuffed her. PO Darlington asked § 87(2)(b) if she had identification on her, to which she said that she did not. PO Darlington asked her where it was, and she told him where it was located. He then retrieved the identification with § 87(2)(b) from inside the room where she told him it was located.

§ 87(2)(g) (**Board Review 11**). § 87(2)(b) quickly entered her apartment before officers could say anything to her. PO Yang entered the apartment after PO Darlington arrested § 87(2)(b) in order to retrieve § 87(2)(b) keys and identification, as well as to keep § 87(2)(b) from being able to access anything in the apartment on her own as part of a concern for their safety.

According to Payton v. New York, 445 U.S. 573, absent exigent or emergency circumstances, warrantless entries into a home are presumptively unreasonable and, when effectuating an arrest, the threshold of the home may not reasonably be crossed without a warrant (**Board Review 12**).

According to People v. McBride, 14 N.Y.3d 440, an urgent need must be present to justify a warrantless entry (**Board Review 14**). The factors used in determining this include: 1) the gravity or violent nature of the offense with which the subject is to be charged, 2) whether the subject is reasonably believed to be armed, 3) a clear showing of probable cause to believe the suspect committed the crime, 4) strong reason to believe the suspect is in the premises being entered, 5) a likelihood that the suspect will escape if not swiftly apprehended, and 6) the peaceful circumstances of the entry.

According to People v. Gonzales, 111 A.D.3d 147, closing a door is not akin to fleeing and an individual cannot flee into their home if they do not leave the interior of their home (**Board Review 13**).

According to People v. Satornino, 153 A.D.2d 595, implied consent to enter a home can be established by conduct as well as words (**Board Review 15**).

It is undisputed that PO Darlington entered § 87(2)(b) home in order to arrest her and did not have a warrant.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been a party in two other CCRB investigation and has been a victim in both (**Board Review 06**).
 - § 87(2)(b)
 -
- PO Darlington has been a member of service for five years. He has been a subject in two prior investigations; 201901346 and 201901577; no allegations were substantiated but in 201901346 there was an entry of premises allegation.
- PO Yang has been a member of service for four years. This is the first CCRB complaint to which she has been a subject.
- PO Bernal has been a member of service for two years. This is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- As of September 10, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (**Board Review 08**).

Squad No.: 1

Investigator:	<u>Inv. Vora</u>	<u></u>	<u>10/19/2021</u>
	Signature	Print Title & Name	Date
Squad Leader:	<u>Mgr. Joy Almeyda</u>	<u></u>	<u>11.9.21</u>
	Signature	Print Title & Name	Date

Reviewer:

Signature

Print Title & Name

Date